

**Before the  
FEDERAL COMMUNICATION COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Valor Telecommunications of Texas, L.P.	)	CC Docket No. 96-45
	)	
Petition for Waiver of Section 54.305	)	
of the Commission's Rules	)	
_____	)	

**REPLY COMMENTS OF  
THE UNITED STATES TELECOM ASSOCIATION**

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## SUMMARY

The United States Telecom Association (USTA) files these reply comments in support of the Petition for Waiver of Section 54.305 (Petition) of Valor Telecommunications of Texas, L.P. (Valor).

Valor seeks relief from FCC Rule 54.305 which limits the amount of universal service support that Valor can receive for access lines that it acquired from the former GTE. USTA supports the Petition on the basis that the Rule has served its intended purpose of being a disincentive for universal service support being a material factor in the acquisition cost of the access lines. The Rule having fully served its purpose, no good cause exists for further restricting Valor to universal service support for its Texas access lines based on the support received for the access lines by GTE. It is now appropriate and reasonable for the FCC to allow Valor to receive universal service support for these access lines based on its own average cost per loop in its Texas exchanges.

The FCC should reject the requests of CTIA and Western Wireless to defer action on the Petition until the FCC acts on a previously filed Western Wireless petition challenging Valor's status as a rural carrier. Valor demonstrates in its Petition that it meets the definition of a rural telephone company. Further, Valor is entitled to the presumption that it is a rural carrier based on its self-certification until the FCC determines, as a matter of record, that it is not a rural carrier. The FCC should proceed to act on the Petition.

The FCC should reject Sprint's assertion that the Petition is procedurally inappropriate. Sprint contends that a rulemaking petition is the appropriate procedural vehicle for the relief requested. USTA contends that Valor has satisfied the requirements of FCC Rule 1.3 for waivers, and Valor is entitled to FCC action on its Petition.

The FCC should promptly grant the Petition.

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**REPLY COMMENTS OF THE UNITED STATES TELECOM ASSOCIATION**

The United States Telecom Association (USTA),<sup>1</sup> through the undersigned counsel and pursuant to the Public Notice released by the Federal Communications Commission (FCC) on April 30, 2003,<sup>2</sup> hereby submits its reply comments in response to the comments and oppositions filed in the above-captioned proceeding. USTA supports Valor's Petition for Waiver of Section 54.305 (Petition). Valor has demonstrated the good cause required by FCC Rule 1.3 for a waiver.<sup>3</sup> None of the parties filing comments or oppositions to the Petition has shown why Valor should continue to be denied sufficient universal service support as required by Section 254 of the Communications Act of 1934, as amended.<sup>4</sup> Equally important, they have not shown why Valor's customers should be denied access to the basic and advanced services that increased

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<sup>1</sup> USTA is the Nation's oldest trade organization for the local exchange carrier industry. USTA's carrier members provide a full array of voice, data and video services over wireline and wireless networks.

<sup>2</sup> *Wireline Competition Bureau Seeks Comment on Valor Telecommunications of Texas, L.P. Petition for Waiver of Section 54.305 of the Commission's Rules*, Public Notice, CC Docket No. 96-45, DA 03-1458 (rel. Apr. 30, 2003) (*Public Notice*).

<sup>3</sup> 47 C.F.R. § 1.3

<sup>4</sup> 47 U.S.C. § 254.

network investment allows if the Petition is granted. Nor has any party demonstrated that it or the public will suffer any material harm if the requested waiver is granted.

FCC rules should be applied only when their underlying objectives will be furthered by their application. At this point, three years after acquiring the GTE access lines, a waiver of FCC Rule 54.305 has no retroactive effect on Valor's acquisition cost, and denying the waiver request serves as an unwarranted penalty for Valor and its customers. Accordingly, the Petition should be granted.

## DISCUSSION

### **1. Section 54.305 Has Fulfilled Its Purpose.**

AT&T,<sup>5</sup> CTIA,<sup>6</sup> Sprint<sup>7</sup> and Western Wireless<sup>8</sup> each filed comments opposing the Petition. All strike a similar theme. Substantively, they assert that Valor has failed to present facts that justify its request for a rule waiver. Procedurally, Sprint asserts that the relief sought by Valor is best addressed in a rulemaking proceeding, while CTIA and Western Wireless collaterally attack the Petition by challenging Valor's status as a rural telephone company. All, though, fail to address the principal question presented by the Petition: *Three years after the acquisition of access lines in Texas from GTE, what actual or potential harm justifies providing Valor with universal service support for the former GTE access lines at less than the full level of support to which Valor would be entitled absent the application of Section 54.305?*

The answer is none, and in the absence of such actual or potential harms, the FCC should forgo

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<sup>5</sup> Opposition of AT&T Corp. to Petition for Waiver of Section 54.305, filed on May 30, 2003 (AT&T Opposition).

<sup>6</sup> Comments of the Cellular Telecommunications & Internet Association, filed on May 30, 2003 (CTIA Comments).

<sup>7</sup> Opposition of Sprint Corporation, filed on May 30, 2003 (Sprint Opposition).

<sup>8</sup> Western Wireless Comments in Opposition to Valor Petition for Waiver, filed on May 30, 2003 (Western Wireless Comments).

continued application of Section 54.305 to Valor. This is not simply a matter of fairness, it is also a matter of FCC compliance with Section 254's mandate that, among other things, support be sufficient to preserve and advance universal service.<sup>9</sup>

In its Rural Universal Service Order,<sup>10</sup> the FCC noted that it had previously found that “as a policy matter, federal high-cost support should be sufficient to enable reasonably comparable rates among states, while leaving states with sufficient resources to set rates for intrastate services that are reasonably comparable to rates charged for similar services within their borders.”<sup>11</sup> In summarizing its decision with respect to universal service support for rural carriers, the FCC concluded “that the plan we adopt today will preserve and advance universal service, consistent with the goals and principles set forth in section 254 of the Act, and encourage competition in high-cost areas, consistent with the competitive goals of the 1996 Act. In particular, [the FCC found] that adoption of the modified embedded cost mechanism [was] consistent with [its] obligation to ensure that the support provided to rural carriers over the next five years is specific, predictable, and sufficient.”<sup>12</sup> The FCC acknowledged that it was imprudent to put funding for rural carriers on the model that served as the basis for universal service support for non-rural carriers.

We find that continuing to base support for rural carriers on embedded cost for the next five years is a reasonable and prudent approach to take in light of the record before us.<sup>13</sup>

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<sup>9</sup> See 47 U.S.C. § 254(b)(5).

<sup>10</sup> *Federal-State Joint Board on Universal Service; Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket Nos. 96-45, 00-256, FCC 01-157, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No. 00-256 (rel. May 23, 2001) (*Rural Universal Service Order*).

<sup>11</sup> *Rural Universal Service Order* at ¶ 29.

<sup>12</sup> *Id.* at ¶ 10.

<sup>13</sup> *Id.* at ¶ 25.

In light of the diversity among rural carriers, and based on our experience in developing the forward-looking high-cost support mechanism for non-rural carriers, we find that five years is a reasonable amount of time to maintain the Rural Task Force plan in place, while we consider long-term solutions. In the meantime, providing support based on embedded costs will provide important certainty to rural carriers, which generally receive a greater proportion of their revenues from universal service support mechanisms than non-rural carriers.<sup>14</sup>

The decision to continue using embedded costs as the basis for determining universal service support for rural carriers reflected the FCC's recognition that "rural carriers face diverse circumstances and that 'one size does not fit all' in considering universal service support mechanisms that are appropriate for rural carriers."<sup>15</sup>

The FCC also elected to retain Section 54.305 in the *Rural Universal Service Order*.<sup>16</sup> The FCC modified "the rule, however, to provide a 'safety valve' that provides support for additional investment made in the acquired exchanges."<sup>17</sup> As Valor points out in its Petition, the principle motivation for the FCC's adoption of Section 54.305 was "to ensure that a selling carrier would not 'artificially inflate' the price of an exchange in anticipation of the buyer's receipt of increased universal service support as a result of the transfer."<sup>18</sup> Accordingly, "[i]n order to discourage carriers from placing such 'unreasonable' reliance upon potential service support in making a purchase decision, the Commission adopted Section 54.305[.]"<sup>19</sup>

Valor explains in its Petition the circumstances specific to its situation that render safety valve support, if applicable, inadequate.<sup>20</sup> USTA believes that Valor has made a compelling

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<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at ¶ 4.

<sup>16</sup> *Id.* at ¶ 12.

<sup>17</sup> *Id.*

<sup>18</sup> Petition at 4.

<sup>19</sup> *Id.* at 4, 5.

<sup>20</sup> Petition at 12.

showing as to the inadequacy of the safety valve mechanism to provide sufficient additional support for network modernization and upgrades.

Many USTA members that have acquired access lines from other carriers are finding that the safety valve mechanism is often inadequate for providing the support needed for network modernization and upgrades. As a general matter, as the FCC considers changes to universal service support, it should eliminate FCC Rule 54.305, as well as caps on universal service support. FCC Rule 54.305 has become a penalty provision, especially for rural carriers that acquire access lines from carriers with larger studies and significantly lower average loop costs. While well-intentioned as a disincentive to “gaming” universal service support in the context of access line acquisitions, FCC Rule 54.305 has proven in many cases to be a disincentive to rural carrier acquisitions. USTA appreciates that rule changes are not appropriate for consideration in this proceeding, and it will continue to make these points in appropriate rulemaking proceedings.

It is appropriate and necessary, though, for the FCC to consider the following points as it evaluates the Petition.

1. GTE was a large incumbent local exchange carrier (ILEC) with large study areas in Texas. The level of universal service support received by GTE in Texas at the time of its sale of access lines to Valor was determined on the basis of average loop costs for study areas containing substantial numbers of low-cost, urban access lines.<sup>21</sup>
2. Sufficient universal service support for Valor, a rural carrier, should be determined at this time by applying the modified embedded cost methodology adopted by the FCC in the *Rural Universal Service Order* to the access lines in its study areas.
3. The amount of additional universal service support to which Valor would be entitled for the GTE access lines that it now owns using the modified embedded cost methodology, absent FCC Rule 54.305, is \$850,000 per month (\$10.2M annualized).<sup>22</sup>

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<sup>21</sup> *Id.* at 3.

<sup>22</sup> *Id.* at 15.



4. This difference in universal service support is material for Valor, but it is “less than one percent of the high-cost loop support fund, which is projected to total \$1,120 million for calendar year 2003.”<sup>23</sup>
5. Contributors to universal service support mechanisms would be unaffected if the FCC grants the Petition.
6. Interstate telecommunications services customers would be unaffected if the FCC grants the Petition.<sup>24</sup>
7. No party opposing the Petition has demonstrated that it will be harmed if the FCC grants the Petition.
8. There is no evidence in the record that Valor’s acquisition cost for the GTE access lines was affected by either party anticipating the filing of this Petition.
9. Granting the Petition can have no retroactive effect on Valor’s acquisition cost.
10. FCC Rule 54.305 has already served its intended purpose with respect to the Valor-GTE Texas transaction and is an impediment to service upgrades.

The points listed above should guide the FCC’s action in response to the Petition. The FCC should not continue to apply FCC Rule 54.305 unless there is a clear and compelling benefit derived from its continued application. USTA sees no ongoing benefit. Valor should receive sufficient universal service support for its Texas exchanges based on its modified embedded costs, absent the application of FCC Rule 54.305. Accordingly, the Petition should be granted.

## **2. Miscellaneous Issues**

CTIA and Western Wireless collaterally attack the Petition by challenging Valor’s status as a rural carrier. Both reference a petition filed by Western Wireless in 2000 asking the FCC to reject Valor’s self-certification as a rural carrier.<sup>25</sup>

In its Petition Valor presents data that demonstrate the rural nature of its Texas service areas. “Of Valor’s 197 Texas exchanges, 107 have fewer than 1000 access lines, and only 11 exchanges have more than 5000 access lines. Valor has 9.23 lines per square mile - less than

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<sup>23</sup> *Id.* at 15, 16.

<sup>24</sup> Except Valor’s customers who would benefit as a result of Valor’s ability to modernize and upgrade its network.

<sup>25</sup> See CTIA Comments at 5 and Western Wireless Comments at 9.

half the average for rural carriers.”<sup>26</sup> The facts presented in the Petition clearly demonstrate that Valor is a rural carrier (rural telephone company) for purposes of receiving universal service support. Further, neither CTIA nor Western Wireless present a compelling case for either delaying action on the Petition or rejecting it because of the outstanding Western Wireless challenge to Valor’s rural carrier status. First, to the extent that the FCC has yet to make a finding that Valor is not a rural carrier, Valor is entitled to the presumption that it is a rural carrier as it has certified. Second, were the FCC to determine at a later date that Valor is not a rural carrier, it could take appropriate remedial action at that time to make necessary adjustments to Valor’s universal service support. The FCC should reject the pleas of CTIA and Western Wireless for it to defer action on the Petition until the FCC has confirmed that Valor is a rural carrier.

Sprint argues that Valor’s request for a waiver should be addressed in the context of a rulemaking proceeding because “there are doubtless other rural carriers who, like Valor, would like to receive more universal service support than they currently receive under the existing mechanisms.”<sup>27</sup> While it is likely to be true that other carriers are interested in changes to the FCC’s existing universal service support mechanisms,<sup>28</sup> this alone is an insufficient basis for the FCC to deny Valor’s Petition. The Petition asks for relief that is specific to Valor and no other carrier. The Petition satisfies the requirements of FCC Rule 1.3. Other carriers, including Sprint, are certainly free to file their own petitions for waiver or rulemaking concerning universal service support mechanism. Valor has elected to file a waiver petition seeking relief that is

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<sup>26</sup> Petition at 10.

<sup>27</sup> Sprint Opposition at 4.

<sup>28</sup> USTA and numerous of its members have an interest in seeing changes made to the administration of universal service support and contribution mechanisms.

specific to Valor. It has demonstrated good cause for the waiver of FCC Rule 54.305 as applied to Valor's Texas exchanges, and the Petition should be granted.

### **CONCLUSION**

On the basis of the foregoing, USTA urges the FCC to act expeditiously and grant Valor's Petition for Waiver of Section 54.305.

Respectfully submitted,

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June 16, 2003

## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of Reply Comments the United States Telecom Association was served on this 16th day of June 2003 by electronic delivery or first class, postage prepaid mail to the persons listed below.

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